



October 11, 2016

Citizen Suit Coordinator
Department of Justice, ENRD
Law and Policy Section
P.O. Box 7415
Ben Franklin Station
Washington, DC 20044-7415
Email: ragu-jara.gregg@usdoj.gov
Reese.goldsmith@usdoj.gov

Gina McCarthy, Administrator
U.S. Environmental Protection Agency
Office of the Administrator, Mail Code 1101A
1200 Pennsylvania Avenue NW
Washington, DC 20460

Sent via Certified Mail and Electronic Mail

Re: Consent Decree – *San Francisco Baykeeper v. Granite Rock Company* (Civil Case No. 4:16-cv-01089 KAW)

Dear Citizen Suit Coordinator and Administrator McCarthy:

Attached as Exhibit A, please find a copy of a [Proposed] Consent Decree between San Francisco Baykeeper (“Baykeeper”) and Granite Rock Company (“Granite Rock”) resolving Baykeeper’s claims against Granite Rock for Clean Water Act violations (*San Francisco Baykeeper v. Granite Rock Company*, Civil Case No. 4:16-cv-01089 KAW). The [Proposed] Consent Decree requires Granite Rock to improve its housekeeping, install a Chitosan-enhanced sand filtration treatment system, closely monitor its stormwater discharges, and take further measures if its pollution discharges continue to exceed numeric action levels in the California General Industrial Stormwater Permit and/or water quality standards.

If you have any questions or comments concerning the terms of the [Proposed] Consent Decree, please contact me at (510) 735-9700 x110 or nicole@baykeeper.org.

Sincerely,

Nicole C. Sasaki
Associate Attorney
San Francisco Baykeeper



Pollution hotline: 1 800 KEEP BAY
www.baykeeper.org

1736 Franklin Street, Suite 800
Oakland, CA 94612
(510) 735-9700

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Cc:

Alexis Strauss, Acting Regional Administrator
EPA Region 9
75 Hawthorne Street
San Francisco, California 94105

Cc via Electronic Mail:

Lisa Cole, Granite Rock Company
Email: lcoble@graniterock.com

Aaron Johnston, Granite Rock Company
Email: ajohnston@graniterock.com

EXHIBIT A

1 Erica Maharg (Bar No. 279396)
2 Nicole C. Sasaki (Bar No. 298736)
3 SAN FRANCISCO BAYKEEPER
4 1736 Franklin Street, Suite 800
5 Oakland, California 94612
6 Telephone: (510) 735-9700
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10 Attorneys for Plaintiff
11 SAN FRANCISCO BAYKEEPER

12
13 **UNITED STATES DISTRICT COURT**
14 **NORTHERN DISTRICT OF CALIFORNIA**
15 **OAKLAND DIVISION**

16 SAN FRANCISCO BAYKEEPER, a California
17 non-profit corporation,

18 Plaintiff,

19 v.

20 GRANITE ROCK COMPANY, a California
21 corporation,

22 Defendant.

Case No.: 4:16-cv-01089-KAW

[PROPOSED] CONSENT DECREE

**(Federal Water Pollution Control Act,
33 U.S.C. §§ 1251 *et seq.*)**

Honorable Kandis A. Westmore

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Water Act, 33 U.S.C. § 1365(b)(1)(A), alleging violations of the Act and the Industrial Stormwater Permit and its previous version, Water Quality Order No. 92-12-DWQ (as amended by Water Quality Order 97-03-DWQ), at the Facility;

WHEREAS, on March 3, 2016, Baykeeper filed a complaint (“Complaint”) alleging certain violations of the Act and the Industrial Stormwater Permit and its previous version, Water Quality Order No. 92-12-DWQ (as amended by Water Quality Order 97-03-DWQ), at the Facility;

WHEREAS, Granite Rock denies all allegations and claims contained in the Complaint and reserves all rights and defenses with respect to such allegations and claims;

WHEREAS, the Parties believe it is in their mutual interest and choose to resolve in full Baykeeper’s allegations in the 60-Day Notice and Complaint through settlement and avoid the cost and uncertainties of further litigation;

NOW THEREFORE IT IS HEREBY STIPULATED BETWEEN THE SETTLING PARTIES, AND ORDERED AND DECREED BY THE COURT, AS FOLLOWS:

I. OBJECTIVES

1. It is the express purpose of the Parties to further the objectives set forth in the Clean Water Act, 33 U.S.C. §§ 1251 et seq., and to resolve those issues alleged by Baykeeper in its 60-Day Notice and Complaint. In light of these objectives and as set forth fully below, Granite Rock agrees to comply with the provisions of this Consent Decree and to comply with the Industrial Stormwater Permit and all applicable provisions of the Clean Water Act.

II. TERM OF CONSENT DECREE

2. **Effective Date:** The Effective Date of this Consent Decree shall be the last day for the U.S. Department of Justice to provide comment on this Consent Decree, i.e., the 45th day following the U.S. Department of Justice’s receipt of the Consent Decree.

3. **Term of Consent Decree:** This Consent Decree shall continue in effect until September 30, 2019 (the “Term”), at which time the Consent Decree, and all obligations under it, shall automatically terminate, unless one of the Parties has invoked Dispute Resolution in accordance with Paragraph 27.

4. **Early Termination:** If Granite Rock should cease industrial operations at the site and file a Notice of Termination (“NOT”) under the Industrial Stormwater Permit prior to the termination date of

1 this Consent Decree, Granite Rock shall send Baykeeper a copy of the proposed NOT concurrent with
2 its submittal to the Regional Water Board. Within ten (10) days of the Regional Water Board's approval
3 of the NOT, Granite Rock shall notify Baykeeper in writing of the approval and remit all outstanding
4 payments, including stipulated payments, to Baykeeper. In the event a new successor or assign
5 continues industrial operations at the site and assumes responsibility for implementation of this Consent
6 Decree pursuant to Paragraph 46, Granite Rock shall notify Baykeeper within ten (10) days of the
7 transition.

8 **III. BEST MANAGEMENT PRACTICES**

9 5. In order to further reduce or prevent pollutants associated with industrial activity from
10 discharging via stormwater to the waters of the United States, Granite Rock shall implement additional
11 appropriate structural and non-structural Best Management Practices ("BMPs") to, at a minimum,
12 comply with the requirements of the Industrial Stormwater Permit.

13 6. **Site Map:** Within thirty (30) days of the Effective Date, Granite Rock shall update the Site Map
14 included in the Facility SWPPP to comply with the Industrial Stormwater Permit, Section X.E.
15 Specifically, the Site Map shall clearly denote: (a) the topography and the direction of stormwater flow
16 for each drainage area of the Facility, (b) property boundaries, (c) known or suspected drop inlets, (d)
17 ground type (pervious or impervious), (e) berms and the materials they are composed of, (f) any
18 permanent structures and features, (g) discharge points, (h) sampling points, and (i) all other physical
19 structures or items relevant under the Industrial Stormwater Permit and this Consent Decree. During the
20 term of the Consent Decree, if Granite Rock makes significant changes to the Facility, such as moving a
21 discharge or sampling point, modifying the topography of the site so as to change a drainage area, or
22 removing or adding structural BMPs, Granite Rock shall update the SWPPP within forty-five (45) days,
23 and upload the revised SWPPP to the Storm Water Multiple Application and Report Tracking System
24 ("SMARTS"), consistent with the requirements of Paragraph 11, below. Granite Rock shall notify
25 Baykeeper by email concurrently when the revised SWPPP has been uploaded to SMARTS.

26 7. **Non-Structural Best Management Practices.** Beginning on the Effective Date, unless
27 otherwise stated, Granite Rock shall implement the following non-structural BMPs:

28 A. Storm Drain Inlet/Catch Basin Best Management Practices:

1 i. Storm Drain Inlet/Catch Basin Inspections: Between September 1 and October 1
2 of each year during the term of the Consent Decree, Granite Rock shall inspect any storm drain inlets,
3 catch basins, discharge and sampling points, filtration/treatment devices, and other BMPs in place at the
4 Facility. Granite Rock shall promptly clean, as needed, each drain inlet, catch basin, discharge and
5 sampling point, filtration/treatment device, and other BMPs in order to remove any accumulated dust,
6 sediment, solids, or debris.

7 ii. Storm Drain Inlet/Catch Basin Maintenance and Cleaning: On a monthly basis
8 between October 1 to May 31 of each year ("Wet Season"), Granite Rock shall inspect all storm drain
9 inlets, catch basins, discharge and sampling points, filtration/treatment devices, and other BMPs in place
10 at the Facility to ensure that they are not in a condition that would materially impair their efficacy, and
11 clean out accessible deposited sediment or debris. Granite Rock shall properly dispose of any dust,
12 sediment, debris, or other removed pollutants.

13 iii. Log of Storm Drain Inlet/Catch Basin Inspections, Maintenance and Cleaning:
14 Granite Rock shall prepare and maintain a log of the Storm Drain Inlet/Catch Basin Inspections,
15 Maintenance and Cleaning described herein ("Maintenance Log") concurrent with Storm Drain
16 Inlet/Catch Basin Inspections activities. The Maintenance Log shall indicate the staff who completed
17 the maintenance activity and when it was completed. The Maintenance Log shall be made available for
18 inspection by Baykeeper at any site inspection or otherwise within three (3) business days advance
19 request by Baykeeper.

20 B. **Site Sweeping:** Granite Rock shall mechanically sweep the accessible paved areas of the
21 Facility at least two (2) times per day during the Wet Season and at least one (1) time per day during the
22 remaining portion of the year ("Dry Season") on each day that Granite Rock is actively operating.
23 Granite Rock shall also sweep non accessible areas by hand or vacuum weekly during the Wet Season
24 and monthly during the Dry Season. Granite Rock shall keep a log or checklist, as appropriate, of the
25 on-site sweeping activity performed ("Sweeping Log"), and shall direct employees and/or contractors to
26 accurately complete the Sweeping Log. The Sweeping Log shall indicate the employee or contractor
27 who conducted the sweeping, the location of the sweeping, and the dates the sweeping activities
28

1 occurred. The Sweeping Log shall be made available for inspection by Baykeeper at any site inspection
2 or within three (3) business days of a request by Baykeeper.

3 C. **Abandoned or Inutile Equipment Storage and Removal:** Granite Rock shall either
4 store under cover or remove from the Facility all abandoned or broken equipment or materials no longer
5 considered for future use that have the potential to serve as the source for pollutant loading.

6 D. **Vehicle and Equipment Management:** Granite Rock shall implement BMPs to reduce
7 or minimize pollutant release from equipment such as forklifts, hydraulic lifts, trucks, and other heavy
8 equipment that are parked or stored in areas of the Facility from which stormwater discharges. Such
9 BMPs shall include placing drip pans under leaking equipment stored or parked for a week or longer,
10 weekly inspections for evidence of leaks from such equipment, and prompt clean-up of spills, drips, or
11 leaks from such equipment. Any spilled substances and absorbent materials used in cleaning up spills
12 shall be disposed of in accordance with all local, state, and federal laws and regulations.

13 E. **Vehicle and Equipment Maintenance:** Granite Rock shall not conduct routine (*i.e.*,
14 non-emergency) vehicle or movable equipment maintenance or repair at the Facility in outdoor,
15 uncovered areas from which stormwater discharges during rainfall events.

16 8. **Structural Best Management Practices for Building Materials Watershed:** Granite Rock
17 shall develop and implement the following structural BMPs:

18 A. **Chitosan-Enhanced Sand Filtration Treatment System:** No later than September 1,
19 2016, Granite Rock shall submit to Baykeeper the final design plan for a chitosan-enhanced sand
20 filtration treatment system. The treatment system shall be designed to treat all stormwater discharging
21 from the Building Materials Watershed and to meet the Design Storm Standards for Treatment Control
22 BMPs in section X.H.6 of the Industrial Stormwater Permit. Granite Rock shall fully install the
23 treatment system by December 1, 2016. If Granite Rock, despite making all good faith and reasonable
24 efforts, is unable to complete installation by December 1, 2016, Granite Rock shall notify Baykeeper of
25 the circumstances causing the delay, and be granted a sixty (60) day extension to complete installation
26 of the treatment system.

27 B. Granite Rock shall diligently file and pursue all required permit applications for the
28 structural BMPs and shall diligently procure contractors, labor, and materials needed to complete all

1 structural BMPs by the required deadlines.

2 C. **Maintenance of BMP Structural Controls:** Beginning on the Effective Date or the
3 date of installation, Granite Rock shall maintain all structural BMPs at the Facility in good operating
4 condition and shall promptly repair any damaged or degraded structural BMPs.

5 9. **Employee Training:** Granite Rock shall develop and implement an employee training program
6 that meets the following requirements:

7 A. Within thirty (30) days of the Effective Date, Granite Rock shall develop and implement
8 a training program, including any training materials needed for effective implementation of the training
9 program, for the Facility ("Training Program"). The Training Program shall ensure: (1) that there are
10 sufficient number of employees delegated to achieve compliance with the Industrial Stormwater Permit
11 and this Consent Decree ("Pollution Prevention Team"), and (2) that these employees are properly
12 trained to perform the activities required by the Industrial Stormwater Permit and this Consent Decree.
13 At a minimum, the Training Program shall require the following:

14 i. Language. Granite Rock shall conduct the Training Program in the language or
15 languages in which all employees participating are fluent;

16 ii. BMP Training. Granite Rock shall train all Pollution Prevention Team members
17 on the BMPs included in this Consent Decree and the SWPPP to ensure that BMPs are implemented
18 effectively and on schedule and structural BMPs are maintained properly. Granite Rock shall train
19 individual Pollution Prevention Team members on their specific responsibilities in implementing BMPs.

20 iii. Stormwater Sampling Training. Granite Rock shall designate an adequate
21 number of Pollution Prevention Team members to collect stormwater samples as required by this
22 Consent Decree. The Training Program shall include the proper sampling protocols to ensure
23 stormwater samples are properly collected, stored, and submitted to a certified laboratory.

24 iv. Visual Observation Training. Granite Rock shall provide training on how and
25 when to properly conduct visual observations to Pollution Prevention Team members performing visual
26 observations at the Facility.

27 v. Non-Stormwater Discharge Training. Granite Rock shall train all Pollution
28 Prevention Team members at the Facility on the Industrial Stormwater Permit's prohibition of non-

1 stormwater discharges, so that employees know what non-stormwater discharges are, that non-
2 stormwater discharges can result from improper surface washing or dust control methods, and how to
3 detect and prevent non-stormwater discharges.

4 vi. All Pollution Prevention Team members shall participate in the Training Program
5 within thirty (30) days of the Effective Date and annually thereafter. New employees shall participate in
6 the Training Program within thirty (30) days of their hiring date.

7 vii. The Training Program shall be provided by a representative of Granite Rock who
8 is familiar with the requirements of this Consent Decree and the Industrial Stormwater Permit.

9 viii. Granite Rock shall maintain training records to document compliance with this
10 section, and shall provide Baykeeper with a copy of these records within fourteen (14) days of receipt of
11 a written request.

12 ix. If and when appropriate, Granite Rock shall integrate any new training
13 requirements resulting from this Consent Decree into the Facility SWPPP. Granite Rock shall also
14 update the SWPPP, if and when appropriate, to identify the positions responsible for carrying out
15 stormwater management, monitoring, sampling, and SWPPP implementation.

16 **10. Amendment of SWPPP:**

17 A. Within thirty (30) days of the Effective Date, Granite Rock shall amend the Facility
18 SWPPP to incorporate the requirements and BMPs set forth in this Section III of the Consent Decree
19 and Section X of the Industrial Stormwater Permit and submit the updated SWPPP to Baykeeper.
20 Baykeeper shall have thirty (30) days from receipt to propose any changes to the SWPPP. Granite Rock
21 will consider Baykeeper's comments on the SWPPP in good faith within fifteen (15) days of receipt.
22 Granite Rock shall either incorporate those comments into the SWPPP or explain via writing or
23 telephone why those comments were not accepted. If any disputes as to the adequacy of the SWPPP
24 remain, the Parties shall meet and confer in accordance with Paragraph 27. Compliance with the
25 SWPPP, as amended in accordance with this Paragraph, shall at all times be a requirement of this
26 Consent Decree.

27 B. Granite Rock shall revise the Facility SWPPP if there are any material changes in the
28 Facility's operations, including, but not limited to, changes to stormwater discharge points or BMPs.

1 These SWPPP revisions shall occur within forty-five (45) days of the changes in operations.

2 C. Granite Rock shall submit any revised SWPPP within ten (10) days of the revisions.
3 Baykeeper shall provide comments, if any, to Granite Rock within thirty (30) days of receipt of the
4 revised SWPPP. Granite Rock will consider Baykeeper's comments on the SWPPP in good faith within
5 fifteen (15) days of receipt. Granite Rock shall either incorporate those comments into the SWPPP or
6 explain via writing or telephone why those comments were not accepted. If any disputes as to the
7 adequacy of the SWPPP remain, the Parties shall meet and confer in accordance with Paragraph 27.

8 D. Granite Rock shall upload the Facility SWPPP to SMARTS within thirty (30) days of
9 finalizing revisions in accordance with this Consent Decree.

10 11. **Additional BMPs:** The BMPs included in this Section constitute a preliminary approach to
11 stormwater management at the Facility for the first Wet Season of the agreement. If, after implementing
12 these BMPs, the sampling conducted in accordance with Section IV indicates that the Facility's
13 stormwater discharges continue to exceed the Action Levels in Exhibit 1, or otherwise do not meet
14 standards consistent with Effluent Limitations and Receiving Water Limitations, Industrial Stormwater
15 Permit Sections V, VI, Granite Rock shall propose additional BMPs as part of any Action Plan prepared
16 in accordance with Paragraph 16.

17 IV. SAMPLING, MONITORING, INSPECTION & REPORTING

18 12. **Sampling Program - Stormwater:** Beginning with the 2016-2017 Wet Season, Granite Rock
19 shall collect and analyze stormwater samples from all discharge points according to the following
20 schedule:

21 A. Granite Rock shall collect and analyze samples from two (2) qualifying storm events, as
22 defined in Section XI.B. of the Industrial Stormwater Permit ("QSEs"), within the first half of each Wet
23 Season during the term of this Consent Decree (October 1 to December 31).

24 B. Granite Rock shall collect and analyze samples from two (2) QSEs within the second half
25 of each Wet Season during the term of this Consent Decree (January 1 to May 31). If Granite Rock is
26 unable to take two (2) samples from any discharge point during the first half of a Wet Season, Granite
27 Rock shall attempt to collect additional samples during the second half of that Wet Season until a total
28 of four (4) samples have been collected from all discharge points in that Wet Season.

1 C. Each stormwater sample must be analyzed for the presence of each of the parameters
2 listed in Exhibit 1.

3 D. Should industrial processes materially change at the Facility, Granite Rock shall conduct
4 sampling for any additional analytical parameters listed in Table 1 of the Industrial Stormwater Permit
5 and additional toxic priority pollutants listed in 40 C.F.R. § 131.38 likely to be present in the Facility's
6 stormwater discharges in significant quantities as a result of the changed industrial processes. Granite
7 Rock shall notify Baykeeper of any such changes within thirty (30) days of such a change.

8 E. **Certified Lab:** Except for pH samples, Granite Rock shall have all stormwater samples
9 collected pursuant to this Consent Decree delivered to a California state certified environmental
10 laboratory for analysis within the time needed for analysis within laboratory method allowable hold
11 times. The laboratory shall thereafter conduct an analysis sufficient to detect individual constituents at or
12 below the Action Levels set forth in Exhibit 1.

13 F. **Sample Result Reporting:** After the Effective Date, Granite Rock shall upload results
14 from sampling and analysis to SMARTS within thirty (30) days of receipt of the laboratory report from
15 each sampling event, and notify Baykeeper by email concurrently when the results have been uploaded
16 to SMARTS.

17 13. **Rain Gauge:** Within thirty (30) days of the Effective Date, Granite Rock shall install a
18 recording rain gauge capable of continuously recording rainfall at the Facility to 0.01 inches. Granite
19 Rock shall maintain the rain gauge in accordance with manufacturers' recommendations, maintain
20 records of all maintenance, and provide maintenance records within fourteen (14) days of a request by
21 Baykeeper.

22 14. **Exceedances:** An "Annual Action Level Exceedance" occurs when the average of all sampling
23 results within a reporting year for a single parameter (except pH) exceeds the applicable annual Action
24 Level in Exhibit 1 (or is outside the Action Level pH range). An "Instantaneous Maximum Action
25 Level Exceedance" occurs when two or more analytical results from samples taken for any parameter
26 within a reporting year exceed the applicable instantaneous maximum Action Level value in Exhibit 1
27 (or is outside the instantaneous maximum Action Level pH range). (An Annual Action Level
28 Exceedance and an Instantaneous Action Level Exceedance are collectively referred to as

1 “Exceedance.”)

2 15. **End-of-Season Summary:** By July 15 following each Wet Season that occurs during the term
3 of the Consent Decree, Granite Rock shall prepare and send to Baykeeper an End-of-Season Summary
4 that includes: (1) a summary chart with all of the sample results from the previous Wet Season; (2)
5 identification of any Exceedance, as defined in Paragraph 14; and (3) identification of any new BMP(s)
6 that Granite Rock has implemented or will implement not already discussed in a prior End-of-Season
7 Summary or Action Plan for the immediately previous Wet Season.

8 16. **Action Plan:** If an Exceedance has occurred during the Wet Season, Granite Rock shall submit
9 to Baykeeper an Action Plan, in addition to an End-of-Season Summary, by July 15.

10 17. **Contents of Action Plan:** If an Action Plan is required, it shall include the following:

- 11 A. The possible sources of the Exceedance(s) during the applicable Wet Season;
- 12 B. A proposal for and evaluation of new site-specific BMPs designed to reduce pollutants in
13 future stormwater discharges to the Action Levels in Exhibit 1 and to achieve BAT and BCT for those
14 constituents;
- 15 C. Data, drawings, and other design rationale demonstrating that the proposed site-specific
16 BMPs will reduce pollutants in future stormwater discharges to the Action Levels in Exhibit 1 and
17 achieve BAT and BCT;
- 18 D. A schedule to implement any revised and/or additional BMPs by the earliest practicable
19 time, and no later than October 1 of the next Wet Season. In any Action Plan, Granite Rock shall
20 consider appropriate structural BMPs as necessary to adequately address its Exceedances; and
- 21 E. If Granite Rock has attempted but not achieved compliance with the Action Level for
22 iron after the 2017-2018 Wet Season, Granite Rock may assert that it has implemented all BMPs
23 available to reduce iron levels in stormwater discharges and reducing iron levels further is
24 technologically infeasible. If Granite Rock asserts that additional BMPs are technologically infeasible
25 to reduce iron levels, Granite Rock shall include in the Action Plan (i) a detailed summary of structural
26 and/or non-structural BMPs available to reduce iron in stormwater discharges, and (ii) an explanation as
27 to why those structural and/or non-structural BMPs are technologically infeasible at the Facility.
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1 **18. Baykeeper Review of Action Plan:** Baykeeper shall have thirty (30) days from receipt to
2 propose revisions to the Action Plan. However, if Baykeeper notifies Granite Rock within thirty (30)
3 days of receipt of the Action Plan that it is unable to provide comments within thirty (30) days,
4 Baykeeper shall have an additional fifteen (15) days to propose revisions to the Action Plan. Within
5 thirty (30) days of receiving Baykeeper's proposed revisions, Granite Rock shall consider each of
6 Baykeeper's recommended revisions to the Action Plan and accept them or timely request to meet and
7 confer, in accordance with Paragraph 27.

8 **19. Implementation of Action Plan:**

9 A. Granite Rock shall implement the Action Plan(s) adopted pursuant to this Consent Decree
10 as an obligation of this Consent Decree.

11 B. Granite Rock shall diligently file and pursue all required local agency applications for
12 permits and/or approvals for the BMPs included in any Action Plan. Granite Rock shall further
13 diligently pursue the procurement of contractors, labor, and materials to complete all BMPs by the
14 October 1 deadline.

15 C. Within thirty (30) days after BMPs set forth in an Action Plan pursuant to this Consent
16 Decree are implemented, Granite Rock shall amend the Facility SWPPP to include all BMP revisions or
17 additions not otherwise already implemented and included in the SWPPP and shall provide Baykeeper
18 with a copy of such revised SWPPP.

19 **20.** During each Wet Season, Granite Rock has an ongoing obligation to evaluate the BMPs
20 implemented at the Facility and included in this Consent Decree and any current or previous Action
21 Plans, and, if the Action Levels are exceeded, make attempts to reduce the concentrations to Action
22 Levels for the remainder of the Wet Season. Granite Rock shall use the results from subsequent
23 stormwater samples as they become available to assist with their ongoing evaluation of the effectiveness
24 of BMPs.

25 **21. Site Access:** During the Term of this Consent Decree, Granite Rock shall permit representatives
26 of Baykeeper to perform up to two (2) physical inspections per year of the Facility during operating
27 hours ("Site Inspection"). Baykeeper shall provide Granite Rock twenty-four (24) hours' notice in
28 advance of such Site Inspections. Baykeeper shall comply with all safety instructions provided to

1 Baykeeper by Granite Rock's staff during all Site Inspections. During Site Inspections, Baykeeper shall
2 be allowed to inspect and sample any stormwater discharges, logs, and take photos and/or videos.

3 22. **Reports:** During the Term of this Consent Decree, Granite Rock shall provide Baykeeper with a
4 copy of all documents submitted to the Regional Water Board or the State Water Board concerning the
5 Facility's compliance with the Industrial Stormwater Permit. Such documents and reports shall be
6 transmitted to Baykeeper via electronic mail at the time the documents are submitted to the Regional
7 Water Board or State Water Board.

8 **V. MITIGATION, FEES AND COSTS**

9 23. **Environmental Mitigation Funding:** As mitigation for the alleged violations set forth in
10 Baykeeper's 60-Day Notice and Complaint, within thirty (30) days of the Effective Date, Granite Rock
11 shall pay the sum of thirty-five thousand dollars (\$35,000.00) to The Rose Foundation, an environmental
12 non-profit organization, for projects that will benefit the San Francisco Bay watershed. The Rose
13 Foundation reports the grant funding made with the tendered funds to the Court, U.S. Department of
14 Justice, and the Parties, setting forth the recipient and purpose of the funds. Payment shall be made to
15 The Rose Foundation, 1970 Broadway, Suite 600, Oakland, California 94612, within thirty (30) days of
16 the Effective Date, with notice to Baykeeper.

17 24. **Reimbursement of Fees and Costs:** Granite Rock shall reimburse Baykeeper in the amount of
18 twenty-seven thousand dollars (\$27,000.00) to help cover Baykeeper's reasonable investigation, expert,
19 and attorneys' fees and costs, and all other reasonable costs incurred as a result of investigating the
20 activities at the Facility related to this Consent Decree, bringing these matters to Granite Rock's
21 attention, and negotiating a resolution of this action. Granite Rock shall tender said payment, payable to
22 Baykeeper, within thirty (30) days of the Effective Date.

23 25. **Compliance Monitoring Funds:** Granite Rock shall provide to Baykeeper a total of nine
24 thousand dollars (\$9,000.00) for costs and fees associated with monitoring Granite Rock's compliance
25 with this Consent Decree through the termination date of this agreement. The total compliance
26 monitoring fund payment shall be made payable to Baykeeper within thirty (30) days after the Effective
27 Date.

1 **26. Interest on Late Payments:** Granite Rock shall pay interest on any payments, fee or costs owed
2 to Baykeeper under this Consent Decree that Baykeeper has not received by the date due. The interest
3 shall accrue starting the first day after the payment is due and shall be computed at 1.5% per month
4 (18% per year).

5 **VI. DISPUTE RESOLUTION AND STIPULATED PENALTIES**

6 **27. Dispute Resolution:** If a dispute under this Consent Decree arises or the Parties believe that a
7 breach of this Consent Decree has occurred, they shall follow the following procedure:

8 A. The Parties shall schedule a meet and confer within ten (10) business days of receiving
9 written notification from the other Party of a request for a meeting to determine whether a violation of
10 this Consent Decree has occurred and to develop a mutually agreed upon plan, including implementation
11 dates, to resolve the dispute.

12 B. If the Parties fail to meet and confer or the meet and confer does not resolve the issue,
13 after at least seven (7) business days have passed after the meet and confer occurred or should have
14 occurred, either Party shall be entitled to all rights and remedies under the law, including bringing a
15 motion before the United States District Court for the Northern District of California for the limited
16 purpose of enforcing the terms of this Consent Decree.

17 C. The Parties shall be entitled to seek fees and costs incurred in any such action pursuant to
18 the provisions set forth in the Section 505(d) of the Clean Water Act, 33 U.S.C. § 1365(d), and
19 applicable case law interpreting such provisions.

20 **28. Stipulated Payments:** Granite Rock shall pay the following stipulated payments during the
21 Term of this Consent Decree.

22 A. \$1,000 for each failure to collect a sample required under this Consent Decree;

23 B. \$200 per day after the report due date for each failure to timely submit any document,
24 report or other communication required in this Consent Decree; and

25 C. \$200 per day payment for every business day (Monday through Friday, excluding state
26 and federal holidays) past the due date that Granite Rock fails to submit any payments due under
27 Paragraphs 23-25 of this Consent Decree.

28 D. Any stipulated payments described above shall be paid by September 1 of each year this

1 Consent Decree is in effect to the Rose Foundation for Communities and the Environment 1970
2 Broadway, Suite 600, Oakland, California 94612, with a copy of payment sent concurrently to
3 Baykeeper. Stipulated payment funds will be used by the Rose Foundation for Communities and the
4 Environment to fund projects that benefit the water quality in the San Francisco Bay watershed.
5 Baykeeper shall forgive stipulated payments if Granite Rock corrects the failure within five (5) business
6 days of notification by Baykeeper of Granite Rock's failure to comply.

7 **VII. JURISDICTION AND DISMISSAL OF COMPLAINT**

8 29. **Jurisdiction.** For the purposes of this Consent Decree, the Parties stipulate that the United
9 States District Court of California, Northern District of California, has jurisdiction over the Parties and
10 subject matter of this Consent Decree. The Parties stipulate that venue is appropriate in the Northern
11 District of California and that Baykeeper has standing to bring the Complaint or any subsequent action
12 or motion pursuant to the Dispute Resolution procedures herein.

13 30. **Jurisdiction to Enforce Consent Decree.** The Court referenced above shall retain jurisdiction
14 over the Parties and subject matter of this Consent Decree for the purpose of adjudicating all disputes
15 among the Parties that may arise under the provisions of this Consent Decree. The Court shall have the
16 power to enforce this Consent Decree with all available legal and equitable remedies.

17 31. **Submission of Consent Decree to DOJ.** Within three (3) business days of receiving all of the
18 Parties' signatures to this Consent Decree, Baykeeper shall submit this Consent Decree to the U.S.
19 Department of Justice ("DOJ") and EPA for agency review consistent with 40 C.F.R. § 135.5. The
20 agency review period expires forty-five (45) calendar days after receipt by DOJ, evidenced by
21 correspondence from DOJ establishing the review period. In the event DOJ comments negatively on the
22 provisions of this Consent Decree, the Parties agree to meet and confer to attempt to resolve the issues
23 raised by DOJ.

24 32. **Dismissal of Complaint:** If there is no objection by DOJ to this Consent Decree, the Parties
25 shall (a) request the approval and entry of this Consent Decree in the exact form presented to DOJ, and
26 (b) concurrently stipulate to and request dismissal of this action with prejudice. Such dismissal shall not
27 affect the rights and obligations of the Parties under this Consent Decree, nor shall it affect the power of
28 the Court to enforce this Consent Decree.

1 **VIII. WAIVER AND RELEASES**

2 33. **Baykeeper Waiver and Release of Noticed Parties:** Baykeeper, on its own behalf and on
3 behalf of its officers, directors, employees, parents, subsidiaries, affiliates and each of their successors
4 and assigns releases Granite Rock, its officers, directors, employees, members, parents, subsidiaries,
5 affiliates, successors or assigns, agents, attorneys and other representatives from and waives all claims
6 raised in the 60-Day Notice and/or the Complaint, including all claims for fees (including fees of
7 attorneys, experts, and others), costs, expenses, or any other sum incurred or claimed or which could
8 have been claimed for matters included in the 50-Day Notice and/or the Complaint, and further
9 represents and warrants as an inducement to settlement that it has no present investigation of, or present
10 intention to assert claims against, other facilities owned or operated by Granite Rock.

11 34. **Granite Rock's Waiver and Release of Baykeeper:** Granite Rock, on its own behalf and on
12 behalf of its officers, directors, employees, members, parents, subsidiaries, affiliates, or their successors
13 or assigns release Baykeeper and its officers, directors, employees, members, parents, subsidiaries, and
14 affiliates, and each of their successors and assigns from, and waive all claims which arise from or
15 pertain to, the 60-Day Notice and/or the Complaint, including all claims for fees (including fees of
16 attorneys, experts, and others), costs, expenses or any other sum incurred or claimed or which could
17 have been claimed for matters included in the 60-Day Notice and/or the Complaint.

18 **IX. MISCELLANEOUS PROVISIONS**

19 35. **Execution in Counterparts:** The Consent Decree may be executed in one or more counterparts
20 which, taken together, shall be deemed to constitute one and the same document.

21 36. **Signatures:** The Parties' signatures to this Consent Decree transmitted by facsimile or
22 electronic mail transmission shall be deemed binding.

23 37. **Construction:** The language in all parts of this Consent Decree, unless otherwise stated, shall be
24 construed according to its plain and ordinary meaning. The captions and paragraph headings used in
25 this Consent Decree are for reference only and shall not affect the construction of this Consent Decree.

26 38. **Authority to Sign:** The undersigned are authorized to execute this Consent Decree on behalf of
27 their respective Party and have read, understood and agreed to all of the terms and conditions of this
28 Consent Decree.

1 **39. Integrated Consent Decree:** All agreements, covenants, representations and warranties, express
2 or implied, oral or written, of the Parties concerning the subject matter of this Consent Decree are
3 contained herein.

4 **40. Severability:** In the event that any of the provisions of this Consent Decree are held by a court
5 to be unenforceable, the validity of the enforceable provisions shall not be adversely affected.

6 **41. Choice of Law:** This Consent Decree shall be governed by the laws of the United States or,
7 where applicable, the laws of the State of California.

8 **42. Full Settlement:** This Consent Decree constitutes a full and final settlement of this matter.

9 **43. Effect of Consent Decree:** Compliance with this Consent Decree does not mean Granite Rock
10 is complying with the Industrial Stormwater Permit, Clean Water Act, or any other law, rule, or
11 regulation.

12 **44. Negotiated Agreement:** The Parties have negotiated this Consent Decree, and agree that it shall
13 not be construed against the Party preparing it, but shall be construed as if the Parties jointly prepared
14 this Consent Decree, and any uncertainty and ambiguity shall not be interpreted against any one Party.

15 **45. Modification of the Agreement:** This Consent Decree, and any provisions herein, may not be
16 changed, waived, or discharged unless by a written instrument signed by each of the Parties.

17 **46. Assignment:** Subject only to the express restrictions contained in this Consent Decree, all of the
18 rights, duties and obligations contained in this Consent Decree shall inure to the benefit of and be
19 binding upon the Parties, and their successors and assigns.

20 **47. Notices and Submissions:** Any notices or documents required or provided for by this Consent
21 Decree or related thereto that are to be provided to Baykeeper pursuant to this Consent Decree shall be,
22 to the extent feasible, sent via electronic mail transmission to the e-mail addresses listed below or, if
23 electronic mail transmission is not feasible, via certified U.S. Mail with return receipt, or by hand
24 delivery to the following address:

25 San Francisco Baykeeper
26 Attention: Nicole Sasaki
27 1736 Franklin Street, Suite 800
28 Oakland, CA 94612
 Email: nicole@baykeeper.org

1 Unless requested otherwise by Granite Rock, any notices or documents required or provided for
2 by this Consent Decree or related thereto that are to be provided to Granite Rock pursuant to this
3 Consent Decree shall, to the extent feasible, be provided by electronic mail transmission to the e-mail
4 addresses listed below, or, if electronic mail transmission is not feasible, by certified U.S. Mail with
5 return receipt, or by hand delivery to the addresses below:

6
7 Granite Rock Company
8 Attention: Lisa Cole
9 Aaron Johnston
350 Technology Drive
Watsonville, CA 95076
Email: lcole@graniterock.com
ajohnston@graniterock.com

11 Notifications of communications shall be deemed submitted on the date that they are emailed, or
12 postmarked and sent by first-class mail or deposited with an overnight mail/delivery service. Any
13 changes of address or addressees shall be communicated in the manner described above for giving
14 notices.

15 **48. Impossibility of Performance:** No Party shall be considered to be in default in the performance
16 of any of its obligations under this Consent Decree when performance becomes impossible due to
17 circumstances beyond the Party's control, including without limitation any act of God, act of war or
18 terrorism, fire, earthquake, and flood. "Circumstances beyond the Party's control" shall not include
19 normal inclement weather, economic hardship, or inability to pay. Any Party seeking to rely upon this
20 Paragraph shall have the burden of establishing that it could not reasonably have been expected to avoid,
21 and which by exercise of due diligence has been unable to overcome, the impossibility of performance.

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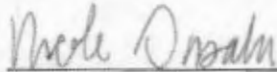
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1 The Parties hereto enter into this Consent Decree, Order and Final Judgment and submit it to the
2 Court for its approval and entry as a final judgment.

3 SAN FRANCISCO BAYKEEPER

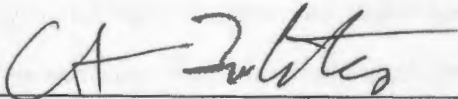
4 Date:

5
6 

7 Nicole C. Sasaki
8 Associate Attorney, San Francisco Baykeeper
9

10 GRANITE ROCK COMPANY

11 Date: 10-7-16

12
13 

14 By: Aaron Johnston
15 Title: V.P. Safety, Environmental & Quality
16

17 APPROVED AND SO ORDERED, this ____ day of ____.

18
19 UNITED STATES DISTRICT JUDGE
20
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EXHIBIT 1

Action Levels for Stormwater Sampling

Constituent	Action Level	Source
pH	6.5 – 8.5 SU	<i>San Francisco Bay Basin Plan Water Quality Objective</i>
Total Suspended Solids	100 mg/L Annual 400 mg/L Instantaneous Maximum	<i>Multi-Sector General Permit 2015 Sector-specific benchmark; California Industrial General Permit 2014-0057-DWQ</i>
Oil and Grease	15 mg/L Annual 25 mg/L Instantaneous Maximum	<i>Multi-Sector General Permit 2000 benchmark; California Industrial General Permit 2014-0057-DWQ</i>
Total Iron	1.0 mg/L Annual	<i>Multi-Sector General Permit 2015 Sector-specific benchmark; California Industrial General Permit 2014-0057-DWQ</i>

1 containing a fabric insert shall be considered the same as a sample collected
2 below the insert.

3 30. While this Consent Decree is in effect, Granite shall take all storm water
4 samples within the first hour that flow is observed at the Discharge Points for each storm
5 event. Sampling events shall occur at least 24 hours apart and be preceded by at least 48
6 hours without storm water discharges.

7 31. If insufficient storm events meeting the above criteria have occurred in any
8 given year by January 31, to ensure that sufficient storm water samples are taken each
9 reporting year (July 1 through June 30), Granite shall take samples from any subsequent storm
10 event(s) subject only to the limitation that Granite shall take all storm water samples within
11 the first hour that flow is observed at the Discharge Points (*i.e.*, if employees arrive at the
12 Facility at the start of the business day during a rainstorm that commenced before they
13 arrived, they shall take storm water samples within one hour of arriving at the Facility. If rain
14 commences during the workday, employees shall take storm water samples within one hour of
15 the commencement of storm water runoff generated by such rainfall). If Granite does not
16 collect the required number of samples from the designated sampling locations due to lack of
17 discharge, Granite shall explain in the annual reports required by paragraph 40 why rainfall
18 was insufficient samples for Granite together the requisite samples.

19 32. Granite shall have all storm water samples collected pursuant to this Decree
20 delivered to a California state certified environmental laboratory for analysis within the time
21 needed for analysis within laboratory method allowable hold times. Granite shall direct the
22 laboratory to conduct analysis sufficient to detect individual constituents at or below the Tier
23 One Levels set forth in the attached Table 1.

24 33. Granite shall provide to Plaintiff complete results from Granite's sampling and
25 analysis of storm water discharges to Plaintiff within fourteen (14) days of receipt of the
26 laboratory report from each sampling event. Each time Granite receives sampling results,
27 Granite shall provide Plaintiff with a chart in digital or hardcopy form that summarizes the
28 results of all the samples and includes the Tier One and Tier Two Levels for comparison. The

1 summary chart shall consistently present the sample summaries in micrograms per liter for all of
2 the parameters for which concentration values are provided.

3 34. Granite agrees to install a storm water sampling platform at the location of
4 sampling outfall DP-1 within thirty (30) days of the Effective Date and thereafter take samples
5 from this location.

6 **B. Visual Observations**

7 35. Storm Water Visual Observations: During the life of this Consent Decree, Granite
8 shall conduct visual observations at all Designated Discharge Locations during every rain event
9 that produces a discharge during operating hours while Granite personnel are on-site.

10 36. During such storm water visual observations, appropriately trained Granite
11 employees shall monitor for the presence of visually observable oil sheens in storm water
12 discharges and/or discolored or turbid storm water discharges. Granite shall take representative
13 photographs of storm water discharges during all storm water sampling events, including
14 photographs of any visually observable oil sheens in storm water discharges and/or discolored or
15 turbid storm water discharges. Upon advanced request by ERF, Granite shall provide these
16 photographs to ERF during the site inspections described in paragraph 37.

17 **C. Compliance Monitoring**

18 37. Site Inspections. Plaintiff and its representatives may conduct up to two site
19 inspections per year at Granite Facility during the life of this Consent Decree. The site
20 inspections shall occur during normal business hours and Plaintiff shall provide Granite with
21 forty-eight (48) hours notice prior to each site inspection. Granite shall make best efforts to
22 provide Plaintiff with forty-eight (48) hours notice prior to any scheduled storm water discharge
23 (i.e., planned opening of the gates that allow stored water from the Facility's holding ponds to be
24 released into receiving waters). This notice obligation shall terminate for the remainder of the
25 water year (i.e., the period between October 1 and May 31 each year) once Plaintiff has taken
26 one sample of discharge from the Facility. During the site inspections, Plaintiff and/or its
27 representatives shall be allowed access to the Facility's SWPPP, M&RP, and other monitoring
28 records, reports, and sampling data for the Facility. During the site inspections, Plaintiff and/or

1 its representatives may collect samples of discharges from the Facility. A certified California
2 laboratory shall analyze storm water samples collected by Plaintiff and copies of the lab reports
3 shall be provided to Granite within ten (10) business days of receipt. At the request of Granite,
4 the samples shall be split and one half provided to Granite so as to allow Granite to have its own
5 certified California laboratory analyze the samples, in which case Granite shall provide the
6 laboratory results to Plaintiff within ten (10) business days of receipt. Plaintiff and/or its
7 representatives shall adhere to all Granite's safety protocols during its site inspections.

8 **D. Cleaning, Maintenance, and Inspection Logs**

9 38. During the life of this Consent Decree, Granite shall keep contemporaneous logs
10 documenting the performance of the inspections (and remedial measures, if any, performed in
11 response to the inspections) performed pursuant to paragraphs 16a, 16d, 16f, and 16i. All logs
12 required by this Consent Decree shall indicate the staff who completed the cleaning,
13 maintenance, or inspection activity and the date the activity was performed. The logs shall
14 further include notes sufficient to describe the completed activity and any pertinent information
15 that the activity yielded (e.g., such as whether EMI's are an adequate condition or whether the
16 Facility is free of oil, debris, or other conditions likely to lead to pollutant loading in storm water
17 discharges). The logs shall be made available to EFRF at the time of any site inspection.

18 **E. Reporting**

19 39. During the life of this Consent Decree, Granite shall provide Plaintiff with a copy
20 of any documents not uploaded to SMARTS (if any) pertaining to the General Permit submitted
21 to or received from the Regional Board or the State Board concerning the Facility, including all
22 documents and reports submitted to the Regional Board as required by the General Permit.
23 Documents and reports sent by Granite to the Regional Board or State Board shall be
24 electronically mailed to Plaintiff contemporaneously with submission to the Regional Board or
25 State Board. Documents received by Granite from the Regional Board or State Board shall be
26 electronically mailed to Plaintiff within three (3) business days of receipt.

27 40. Granite shall provide Plaintiff with reports on June 30 each year documenting
28 measures taken by Granite to comply with the Decree and providing Plaintiff with summary

1 tables of all storm water sample test results for the Facility and cleaning, maintenance, and
2 inspection logs prepared pursuant to paragraph 38. Granite shall further notify ERF within three
3 business days whenever it has uploaded storm water reports and/or other information such as
4 storm water sampling results to the State Board SMARTS online database. Granite need not
5 provide any separate report to ERF of any information Granite uploads to SMARTS.

6 **IX. EMPLOYEE TRAINING**

7 41. Within thirty (30) days of the Effective Date, Granite shall develop and
8 implement a training program, including any training materials needed for effective
9 implementation of the training program, to ensure (1) that there are a sufficient number of
10 employees delegated to achieve compliance with the Storm Water Permit and this Consent
11 Decree, and (2) that these employees are properly trained to perform the required compliance
12 activities ("Training Program"). At a minimum the Training Program shall familiarize all
13 employees at the Facility with the requirements of the Storm Water Permit and this Consent
14 Decree.

15 42. The Training Program shall require specific training to include at least the
16 following:

- 17 a. Non-Storm Water Discharge Training. Granite shall train all Facility employees
18 on the Storm Water Permit's prohibition of non-storm water discharges, so that
19 employees know what non-storm water discharges are, which can result from
20 improper draining of automobile fluids, and how to detect them and prevent them;
- 21 b. BMP Training. Granite shall train all members of the Facility's pollution
22 prevention team on BMP implementation and maintenance to ensure that BMPs
23 are implemented effectively to prevent the exposure of pollutants to storm water,
24 to prevent the discharge of contaminated storm water, and to ensure the proper
25 treatment of storm water at the Facility;
- 26 c. Sampling Training. Granite shall designate adequate number of employees
27 necessary to collect storm water samples from each discharge location as
28 required by this Consent Decree and/or the Storm Water Permit. The training

1 shall include the proper sampling protocols, including chain of custody
2 requirements, to ensure storm water samples are properly collected, stored, and
3 submitted to a certified laboratory.

- 4 d. Visual Observation Training. Granite shall provide training to all individuals
5 performing visual observations at the Facility pursuant to this Consent Decree
6 and/or the Storm Water Permit.

7 43. Training shall be provided on an annual basis, or as otherwise required to ensure
8 compliance with the terms of this Consent Decree, by a private consultant or a representative of
9 Granite who is familiar with the requirements of this Consent Decree and the Storm Water
10 Permit. The training shall be repeated as necessary to ensure that all such employees are familiar
11 with the requirements of this Consent Decree, the Storm Water Permit, and the Facility's SWPPP
12 and M&RP. All new staff will receive this training before assuming responsibilities for
13 implementing the SWPPP and/or M&RP.

14 44. Granite shall maintain training records to document compliance with this section,
15 and shall provide Plaintiff with a copy of these records within fourteen (14) days of receipt of a
16 written request. The Training Program shall be specified in the SWPPP.

17 **X. STORM WATER POLLUTION PREVENTION AND MONITORING AND**
18 **REPORTING PLAN**

19 45. Within ninety (90) days after the Effective Date of this Consent Decree, Granite
20 shall revise its SWPPP and its M&RP to:

- 21 a. Incorporate the requirements of the Storm Water Permit, and this Consent Decree,
22 including but not limited to revisions to the SWPPP to specify performance of the
23 Remedial Measures referred to in Part VI (REMEDIAL MEASURES), *e.g.*, the
24 facility wide BMPs, structural BMP's, good housekeeping measures, and site
25 mapping specified in this Part VI;
26 b. Identify the individuals responsible for compliance with the Storm Water Permit
27 and this Consent Decree including specifying which individual is responsible for
28 what area of compliance (*e.g.*, John Doe, collecting samples);

- c. Describe all BMPs and how they will be operated and/or maintained;
- d. Denote all actions taken to control the deposition of dust, particulate matter and other pollutants at the Facility;
- e. Describe where and when storm samples are to be collected and explain why the sample points are representative of off-site discharge and include a checklist that must be used by trained Facility personnel when conducting the storm water sampling required under the Storm Water Permit and/or under this Consent Decree;
- f. Describe where and when visual inspections of the Facility are to be performed and include a visual inspection checklist that must be used by trained Facility personnel when conducting the visual observations required under the Storm Water Permit and/or under this Consent Decree; and
- g. Describe the type, direction, and volume of vehicle traffic at the Facility.

46. Commenting on the SWPPP and M&RP Revisions. Granite shall submit the revised SWPPP and M&RP to Plaintiff for review and comment as soon as it is completed but in any event no later than thirty (30) days after the Effective Date. Plaintiff shall provide comments made on SWPPP and M&RP revisions, if any, to Granite within thirty (30) days of receipt of the SWPPP and M&RP. Granite shall incorporate Plaintiff's comments into the SWPPP and M&RP or shall justify in writing why any comment is not incorporated within thirty (30) days of receiving Plaintiff's comments. Any disputes over the adequacy of the revised SWPPP and M&RP shall be resolved pursuant to the Dispute Resolution provisions of Part XIII (DISPUTE RESOLUTION).

47. Additional Revisions to SWPPP and M&RP. Granite shall revise the SWPPP and M&RP if there are any changes in the Facility's operations, including but not limited to changes to storm water discharge point(s) or changes or additions to the BMPs at the Facility resulting from an Action Plan. Granite shall submit any revised SWPPP and M&RP to Plaintiff for review and comment within five (5) days of completion. Plaintiff shall provide comments, if any, to Granite within thirty (30) days of receipt of any revised SWPPP and M&RP. Granite shall

1 incorporate Plaintiff's comments into any revised SWPPP and M&RP, or shall justify in writing
2 why any comment is not incorporated within thirty (30) days of receiving comments. Any
3 disputes as to the adequacy of the SWPPP and M&RP shall be resolved pursuant to the Dispute
4 Resolution provisions of Part XIII (DISPUTE RESOLUTION).

5 **XL. MITIGATION, FEES, AND COSTS**

6 48. Supplemental Environmental Project Funding: As mitigation of the violations
7 alleged in Plaintiff's Notice and Complaint, Granite shall pay the sum of \$25,000 to the Rose
8 Foundation for Communities and the Environment for projects designed to advance water quality
9 or environmental evaluation and/or environmental restoration in the San Lorenzo River
10 watershed and/or Monterey Bay. Within 30 days of the Effective Date, Granite shall tender this
11 payment to the Rose Foundation for Communities and the Environment.

12 49. Reimbursement of Fees and Costs: Granite shall reimburse Plaintiff in the
13 amount of \$77,000 to help defray Plaintiff's investigation fees and costs, expert fees and costs,
14 reasonable attorneys' fees, and all other costs incurred as a result of investigating the activities at
15 the Facility, bringing these matters to Granite's attention, and negotiating a resolution of this
16 action in the public interest. Such payment shall be made within fifteen (15) days of the
17 Effective Date.

18 50. Compliance Monitoring Funds: Granite shall pay to Plaintiff \$4,000 per year for
19 costs and fees associated with monitoring Granite's compliance with this Consent Decree.
20 Monitoring activities include site inspections, review of water quality sampling reports, review
21 of annual reports, discussion with representatives of Granite concerning potential changes to
22 compliance requirements, water quality sampling, etc. The first of such payments shall be made
23 within fifteen (15) days of the Effective Date. Subsequent payments shall be due on the year
24 anniversary of the Effective Date of this Consent Decree. Granite may pro rate the amount of the
25 last such payment to reflect the percentage of one year equal to the remaining life of the Consent
26 Decree (i.e., if only six months remains before the Consent Decree is to terminate, Granite need
27 only pay 50% of the \$4000 sum). All payments pursuant to this paragraph shall be made payable
28 to the Environmental Advocates Attorney-Client Trust Account.

1 51. Action Plan Payments: If Granite submits an Action Plan to Plaintiff as required
2 by this Consent Decree, Plaintiff shall be entitled to submit to Granite an invoice for up to
3 \$2,500 in costs incurred by an expert retained by Plaintiff to review the Action Plan. Granite
4 shall tender Action Plan payments within 30 days of receiving such an invoice via check made
5 payable to the Environmental Advocates Attorney-Client Trust Account.

6 **XII. STIPULATED PAYMENTS**

7 52. In the event Granite fails to submit to Plaintiff any document, report or other
8 communication required under paragraph 39 of this Agreement, for any report more than five (5)
9 days late, Granite shall pay a per day payment of Five Hundred Dollars (\$500) commencing on
10 the sixth (6th) day after the report due date.

11 53. In the event Granite fails to complete a measure of specific performance as
12 required by paragraphs 15 through 47 above, Granite shall incur a late payment of Five Hundred
13 Dollar (\$500) per day commencing on the sixth (6th) day after the date by which the measure
14 was to be completed or implemented.

15 54. If Granite fails to submit to any payments required under paragraphs 48 through
16 51 of this Consent Decree, Granite shall incur a Five Hundred Dollars (\$500) per day payment
17 for each day that Granite's payment continues to be late.

18 55. Any stipulated payments pursuant to this Part shall be paid to the Rose
19 Foundation for Communities and the Environment within fourteen (14) days of the event that
20 precipitated the Stipulated Payment liability. Stipulated payments shall be used for projects
21 designed to advance water quality or environmental evaluation and/or environmental restoration
22 in the San Lorenzo River watershed and/or Monterey Bay. Granite shall send Plaintiff notice of
23 any such stipulated payments within seven (7) days of tendering such payments.

24
25 **XIII. DISPUTE RESOLUTION AND ENFORCEMENT OF CONSENT DECREE**

26 56. Dispute Resolution Process: If a dispute under this Consent Decree arises, or
27 either Party believes that a breach of this Consent Decree has occurred, the Parties shall schedule
28 a meet and confer within ten (10) business days of receiving written notification from the other

1 Party of a request for a meeting to determine whether a violation has occurred and to develop a
2 mutually agreed upon plan, including implementation dates, to resolve the violation. If the
3 Parties fail to meet and confer or the meet and confer does not resolve the issue, after at least
4 seven days have passed after the meet and confer occurred or should have occurred, either Party
5 shall be entitled to all rights and remedies under the law, including bringing a motion before the
6 District Court of California, Northern District, which shall retain jurisdiction over the Action for
7 the limited purposes of enforcement of the terms of this Consent Decree. The Parties agree not
8 to object to an expedited hearing schedule on any Dispute Resolution motion if one of the Parties
9 requests one.

10 57. Litigation Costs and Fees: Litigation costs and fees incurred in conducting meet
11 and confer or otherwise addressing and/or resolving any dispute, including an alleged breach of
12 this Consent Decree, shall be awarded in accord with the standard established by Section 505 of
13 the Clean Water Act, 33 U.S.C. §1365 and case law interpreting that standard.

14 **XIV. NOTICES AND SUBMISSIONS**

15 58. Except as otherwise expressly provided in this Consent Decree, whenever under
16 the terms of this Consent Decree notice is required to be given or a report or other document is
17 required to be forwarded by one Party to another, it shall, to the extent feasible be sent to the
18 following individuals as electronic computer files at the e-mail addresses specified below. If a
19 given document cannot be e-mailed, it shall be mailed by U.S. Mail to the following addresses.
20 Any change in the individuals designated by either Party must be made in writing to the other
21 Parties.

22 As to Plaintiff:

23 Fredric Evenson
24 ECOLOGY LAW CENTER
25 P.O. Box 1000
26 Santa Cruz, CA 95061
27 Telephone: (831) 454-8216
28 Email: evenson@ecologylaw.com

Christopher A. Sproul
Environmental Advocates
5135 Anza Street

San Francisco, California 94121
Email: csproul@enviroadvocates.com

As to the Defendant:

Richard Watts
General Counsel
Granite Construction
585 West Beach St.
Watsonville, CA 95076

Email: Richard.Watts@gcinc.com

XV. PAYMENTS

59. All payments to Plaintiff (other than payments of Supplemental Environmental Project funding pursuant to paragraph 48 and Stipulated Payments pursuant to Part XII) shall be made by check made payable to Environmental Advocates Attorney Client Trust Account. Payments shall be sent via certified mail, return receipt requested, to the following address:

Christopher A. Sproul
Environmental Advocates
5135 Anza Street
San Francisco, California 94121

60. All Supplement Environmental Project funding pursuant to paragraph 48 and Stipulated Payments pursuant to Part XII shall be made by check payable to the Rose Foundation for Communities and the Environment. Such payments shall be sent via certified mail, return receipt requested, to the following address (with notice to the Plaintiff that such payments have been sent):

Tim Little
Rose Foundation for Communities and the Environment
1970 Broadway, Suite 600
Oakland, California 94612-2218

XVI. MISCELLANEOUS PROVISIONS

61. **Execution in Counterparts:** The Consent Decree may be executed in one or more counterparts which, taken together, shall be deemed to constitute one and the same document.

1 62. **Severability:** In the event that any of the provisions of this Consent Decree is
2 held by a court to be unenforceable, the validity of the enforceable provisions shall not be
3 adversely affected.

4 63. **Construction:** The language in all parts of this Consent Decree, unless otherwise
5 stated, shall be construed according to its plain and ordinary meaning.

6 64. **Integrated Consent Decree:** All agreements, covenants, representations and
7 warranties, express or implied, oral or written, of the Parties concerning the subject matter of this
8 Consent Decree are contained herein.

9 65. **Facsimile Signatures:** Signatures of the Parties transmitted by facsimile shall be
10 deemed binding.

11 66. **Force Majeure:** No Party shall be considered to be in default in the performance
12 of any of its obligations when a failure to perform is due to a "Force Majeure." A Force Majeure
13 event is any act of God, war, fire, earthquake, flood, natural catastrophe, and restraint by court
14 order or public authority. A Force Majeure event does not include normal inclement weather,
15 such as anything less than or equal to a 100 year/24 hour storm event or inability to pay. Any
16 Party seeking to rely upon this paragraph shall have the burden of establishing that it could not
17 reasonably have been expected to avoid, and which by exercise of due diligence has been unable
18 to overcome, the Force Majeure. The Parties shall exercise due diligence to resolve and remove
19 any Force Majeure event.

20 67. The parties hereto enter into this Consent Decree, Order and Final Judgment and
21 submit it to the Court for its approval and entry as a final judgment.

22 **XVII. EFFECTIVE AND TERMINATION DATES**

23 68. Within three (3) days of the final signature of the Parties, Plaintiff shall submit
24 this executed Consent Decree to EPA and DOJ for a 45-day review and comment period
25
26
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1 pursuant to CWA section 505(c)(3) and 40 C.F.R. § 135.5. The Court shall not enter its judgment
2 on consent until the expiration of this review and comment period. If EPA or DOJ requests or
3 suggests revisions to this Consent Decree or objects to entry of this Consent Decree in the form
4 presented, the Parties shall within ten (10) days meet and confer on whether to revise this
5 Consent Decree in accord with the requested or suggested revisions provided by EPA or DOJ
6 and/or otherwise to accommodate EPA or DOJ's objections. If the Parties do not mutually agree
7 to any such revisions or modifications, the Parties shall so notify the Court and request entry of
8 the Consent Decree in the form drafted. If the Court objects to entry of this Consent Decree in
9 the form presented, the Parties will attempt in good faith to agree to revisions of this Consent
10 Decree necessary so that it is acceptable to the Court.

11 69. The Effective Date of this Consent Decree shall be the last day for EPA and DOJ
12 to comment on the Consent Decree, i.e., the 45th day following these agencies' receipt of the
13 Consent Decree, or the date on which these agencies provide notice that they require no further
14 review, whichever occurs earlier.

15 70. This Consent Decree shall terminate on July 31, 2018, provided that Granite has
16 made all monetary payments owed under the Consent Decree and there is no pending Dispute
17 Resolution proceeding pursuant to the provisions of Part XIII (DISPUTE RESOLUTION). If
18 Granite has not made all monetary payments owed under the Consent Decree or if there is a
19 pending Dispute Resolution proceeding, the Consent Decree shall be extended until Granite has
20 made all monetary payments owed under the Consent Decree and all pending Dispute Resolution
21 proceedings have been resolved.

22 IN WITNESS WHEREOF, the undersigned have executed this Consent Decree as of the
23 date first set forth above.

24 **IT IS SO ORDERED:**

25 Date: _____

26
27 Honorable Edward J. Davila
28 UNITED STATES DISTRICT COURT JUDGE
NORTHERN DISTRICT OF CALIFORNIA

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2 APPROVED AS TO FORM:

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5 Dated: 2/19 2016

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8 Dated: 2/19 2016

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11 APPROVED AS TO CONTENT:

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13 Dated: 2/29 2016

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16 Dated: 2/16 2016

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19 Dated: 2/16 2016

ENVIRONMENTAL ADVOCATES

By: Christopher Sproul
Christopher Sproul
Attorney for Plaintiff

By: Thomas Vandenburg
Thomas Vandenburg
Attorney for Defendants

By: James Lamport
James Lamport,
Ecological Rights Foundation

By: Martin P. Matheson
Martin P. Matheson
Granite Construction Company

By: Martin P. Matheson
Martin P. Matheson
Granite Construction Inc.

Exhibit 1 - GSI Design Storm Memo

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Exhibit 2

Table 1. Limits for Facility Discharges

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2 **Table 1. Limits for Facility Discharges**
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Contaminant	Limit <i>Applicable Basin Plan value (salt or freshwater dependent)</i>
Oil and grease	15 mg/L
Total Suspended Solids	100 mg/L
pH	6-9 units

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Exhibit 3

Table 2. Limits for Facility Contribution above Background

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Table 2. Limits for Facility Contribution above Background

Contaminant	Limit above Background
Total Recoverable Zinc	California Toxics Rule Criteria for Freshwater Aquatic Life ¹
Chemical Oxygen Demand	120 mg/l

¹ The zinc limit will be based on Federal Register/Vol. 65, No. 97/Thursday, May 18, 2000/Rules and Regulations, Page 31717. Because the allowable concentration for zinc is dependent of the hardness of the receiving water, the upstream/downstream zinc contribution evaluation will include collecting and analyzing downstream samples for hardness and the Table 2 value for zinc will be calculated based on the measured hardness of the receiving water.